

FILED
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

2012 FEB 24 P 2:23

DAVID BERNSTEIN, DAVID B.
BERNSTEIN, STEVEN W.
BERNSTEIN and THE STEVEN
W. BERNSTEIN TRUST

Plaintiffs,

vs.

THE CHATTANOOGA TIMES FREE
PRESS, and WEHCO MEDIA, INC.,

Defendants

CLERK OF COURT
EASTERN DISTRICT OF TENNESSEE

BY _____ DEPT. CLERK

Civil Case No. **1 : 12CV 59**

Mattice/Carter

COMPLAINT

Plaintiffs ("Bernsteins"), David Bernstein, David B. Bernstein, citizens of Louisiana, Steven W. Bernstein, a citizen of Georgia, and the Steven W. Bernstein Trust, David B. Bernstein, Trustee, a Louisiana created and based legal entity, appearing in proper person, states as follows:

1. David Bernstein, David B. Bernstein and the Steven W. Bernstein Trust own The Bernstein Company, LLC, an inactive Tennessee Limited Liability Company, that formerly owned the Town & Country Inn, The Town & Country East Restaurant and the Bourbon Street Music Bar, businesses formerly located at 2000 E. 23rd Street in

Chattanooga, Tennessee. Steven W. Bernstein, though not an owner of the Bernstein Company, LLC., has been represented as such by the defendants, and by association and participation as agent for the Bernstein Company, LLC is a party to this action.

2. Defendants are The Chattanooga Times Free Press (“TimesFreePress”), a Tennessee Corporation licensed and doing business in Hamilton County, Tennessee, owned and operated by defendant, WEHCO, Media, Inc., an Arkansas corporation licensed to do and doing business in the State of Tennessee.

3. Subject matter jurisdiction is based upon diversity of citizenship and a claim for monetary damages in excess of \$75,000.00.

4. Beginning on November 23, 2009, and continuing on February 6, 2011, February 25, 2011, March 4, 2011 and most recently, December 21, 2011, the TimesFreePress has published as series of articles about the Town & Country Inn and its owners. The articles can be accessed along with online comments via TimesFreePress’s website at timesfreepress.com.

5. The TimesFreePress’s articles about the Town & Country Inn and its owners contain numerous statements that are false and

defamatory about the Bernsteins, which were published either with knowledge that the statements were false and defamatory, with reckless disregard for the truth of the statements, or with negligence in failing to ascertain the truth of the statement. The TimesFreePress also published matters that placed the Bernsteins before the public in a false light highly offensive to a reasonable person, with knowledge or reckless disregard of the falsity of the statement. Furthermore, on information and belief, the TimesFreePress was engaged in civil conspiracy, by providing material assistance to individuals attempting to extort money, settle personal scores in return for material defendant could use in its "investigation." The Defendants, working with sources for its stories, have engaged in tortuous interference, business disparagement and intentional infliction of emotional distress.

6. The Bernsteins explained the nature of the above claims and requested retractions in correspondence dated March 28, 2011 and January 31, 2012, attached hereto as Exhibit A and Exhibit B and incorporated herein by reference.

7. The initial story was based on an employee who had been recently discharged and who had filed a minimum wage claim with the U.S.

Labor Board. Had the reporter inquired about the wages he had earned, she would have discovered that he received \$580 every two weeks together with room and board. He was thus receiving more than minimum wage when he was an employee. As to his post-employment period, he was neither working nor earning anything, though he was staying at the hotel, not paying rent and engaged in other activities detrimental to the Bernsteins. The TimesFreePress provided support to his meritless minimum wage claim and quoted his allegation that we were engaged in “slavery” and that we were trying to evict him because we were trying to prevent him from exposing our “illegal acts.” There was no fact checking to determine if any of these allegations were correct. For these and additional reasons explained in Exhibit A, the article was defamatory, portrayed plaintiffs in a false light. .

8. The second article, a Sunday headline piece, developed the theme that the Bernsteins were exploiters of their staff and the homeless more fully. In pages 3-13 in Exhibit A, we explain in some detail how the representations in that article are false, unfair, defamatory and portray the Bernsteins in a false light. According to what we have learned from those employees who refused to participate in the conspiracy, those

who were involved saw the owners as millionaires who were absent, uninvolved and feckless. They saw an opportunity to obtain some easy money if they could convince the U.S. Labor Board to prosecute their case. To do this, they 1) inflated the hours they worked and/or understating the wages they received; 2) lobbied others to join them so there would not be witnesses that would challenge their story; and 3) used their access to TimesFreePress to manipulate public opinion. The TimesFreePress tailored its article around the statements of the conspirators. It substituted self-serving, false and bigoted commentary by former staff for accurate and fair reporting. The owners were accused of filling up the hotel with homeless (false), making huge profits from the sponsoring entities (false) and hiding the profits behind shady bookkeeping (false). Defendant went to someone known for her bigoted views about the owners and slandering of them for proof of their dishonest bookkeeping rather than consult with any number of people who knew the facts or request financial records. To make their extremely defamatory portrayal possible, they avoided any discussion of our expenses. Their theme was that we were shrewd businessmen exploiting the poor and vulnerable. The opposite was

true: The Town & Country provided refuge to homeless at the Bernsteins' considerable expense. Employee theft was rampant and most staff did as little as possible for their rooms, but any and all such stories were suppressed.

9. The occasion of the February 25, 2011 article was the removal by the new owners of Town & Country workers. However, the body of the article repeats the same material from the previous one about the Bernsteins providing staff with one paycheck in five years (false), being investigated by the state for giving rooms in exchange for work (false), working staff 60 to 80 hours a week (false), as well as other exaggerations and misstatements. The article does not examine whether said employees honored their agreement with the owners by paying for their rooms when they received paychecks. Nor did the article honestly or fairly deal with the Town & Country Foundation. The TimesFreePress, in this and two previous articles, allege the Foundation was an illegal entity forced on staff. In truth, the Foundation was popular with staff, was formed to keep staff off the streets at owners' expense, made minimal demands on staff, and was a lawful and properly registered non-profit.

10. The March 4, 2011 article "More Evictions at Motel" told the bald face lie: "Nearly 15 employees were fired last week by Bernstein and were told to leave the property because new owners were coming on site." The Bernsteins did not fire anyone or tell anyone they had to leave, and in fact refused to fire anyone or tell them to leave. David B. Bernstein was on site to help people move, help with money, purchase meals for former staff, and lobby the new owners for employment for former staff and allow for more time for them to get situated. On information and belief, a statement provided the staff writer by former employee, Joe Fason, in support of the Bernsteins was suppressed.

11. The TimesFreePress has used every opportunity to reach a new and broader audience with each subsequent article. A December 21, 2011 article is ostensibly about 35 Tennessee hotels that have been forced to pay fines and back wages, but in fact it is for the most part about the Town & Country. It features a large photograph of how the hotel appeared before it was sold as if it still was the Town & Country. The article contends that the Bernsteins ordered to make payment to former employees. This is completely false. There has been no determination whatsoever that work provided hotel staff was "worth

more than the rooms” or that residents “were not paid overtime” or that employees “were on call all night.” The article, like the others, is totally untrue, yet it makes it appear that the employees won after “a long, tough fight.” It cites the TimesFreePress’s earlier story about “six month federal labor investigation that put the hotel’s treatment of employees in the limelight (it was the TimesFreePress that did this), a federal investigation into “whether David and Steven Bernstein owe dozens or former employees back wages.” The individual owners, which the TimesFreePress refuses to identify correctly, are not liable under the facts of this case. Neither is the company liable to dozens of employees. The article again claims that former employees were forced to participate in its non-profit Foundation. Furthermore, it misinforms its readers about how Grace In Action operated, making it appear that the Bernsteins received rent for homeless residents for the first few weeks through Church donations. The LLC sometimes, though not always, received compensation for a few days from a variety of partners in the Chattanooga Homeless Coalition. More often than not, there was a period of days, weeks or months where families stayed after their sponsorship ended at owners’ expense. Not many rooms were set aside

for this purpose. The TimesFreePress totally distorted what this was about, making it appear as though the Bernsteins were shrewdly making lots of money by filling the hotel with sponsored homeless people. This is totally false.

12. Statements in support of the Bernsteins have been suppressed. Reporters have declined to interview managers and staff. Blog entries that contradict the false stories published by Defendant have been removed, while hateful, erroneous entries have been allowed to remain. It has suppressed information that it knows about a key source that was intimately involved with a member of Defendant's staff. It has suppressed information it knows about two Tennessee Labor Board meetings with GM Paul Watson and informing him how to draft contract that he used where rooms were exchanged for work. It suppressed information about the Atlanta ACLU review of the Town & Country Foundation residency agreement. It has totally suppressed the truth to paint a false and defamatory story about the owners.

13. The TimesFreePress has suppressed several stories that happen to be true regarding the numerous ways the employees were stealing from the Bernstein. There were after closing hour parties in the bar,

most of the liquor was being stolen, there was an organized rent strike, hotel property was removed and sold at flea markets, desirable double rooms were occupied without authorization, employee rooms were renovated without authorization, employees were allowed to make deals with prostitutes who received free rooms, rooms were stripped of metal that was sold as scrap, front desk staff were trained by assistant managers on how to steal, bar staff was allowed to pocket sales, pour heavy drinks and give free drinks for better tips, deals were struck between management and staff for unearned overtime pay, correspondence between the Tennessee Labor Board and the owners was routed to an apartment in public housing so the owners would not be able to learn about or challenge unemployment claims, and so on. There also was a rivalry between the GM Paul Watson and the bar and restaurant manager, James Breedwell. The nature of the rivalry and how it has provided the TimesFreePress with sources of information and additional claimants is explained in Exhibits A and B, but nowhere does the TimesFreePress explore this matter. Defendants have created a story out of whole cloth about salt of the earth employees versus a criminal, rapacious, arrogant employer that exploits the homeless. The

story contrived by the TimesFreePress and its co-conspirators is a fantasy based on greed, bigotry, bitter in-house rivalry, established patterns of dependency, drug abuse, and theft, and the personal ambitions of TimesFreePress staff. Defendants' conduct was extreme and outrageous, beyond all possible bounds of decency and utterly intolerable in a civilized society.

14. On information and belief, there was a group of managers and employees that saw the impending sale as a threat to their plans for the business. To prevent this from happening, they arranged with the TimesFreePress to have a particularly negative and prominent story run days prior to the scheduled closing, and have it hand delivered to the Georgia bank that was handling the financing and closing.


15. The TimesFreePress knew that Steven W. Bernstein was not an owner of The Bernstein Company, LLC, but listed him as such so that it could use information it had obtained about him, distort and exaggerate it, and cast the Bernsteins in a false and defamatory light with it.

16. As a result of the aforementioned conduct, more completely detailed in Exhibits A and B, the Defendants, the Chattanooga Times Free Press and WEHCO, Media, Inc., are liable to the Bernsteins for:
- a. a full, front page Sunday Edition retraction and apology;
 - b. all reasonable and appropriate punitive damages;
 - c. compensatory damages for defamation of character and placing the plaintiffs before the public in a highly offensive false light past, for damage to reputation, for present and future severe humiliation, embarrassment, mental and emotional anguish, loss of enjoyment of life, loss of sleep, loss of society, trust and friendship and intentional infliction of emotional distress, a judgment in the amount of Twenty-five (25) Million Dollars.
 - d. reasonable actual damages for loss of business and business opportunities, damage to past, present and future business and professional relationships and opportunities, encouragement of false claims, encouragement of time consuming and costly investigations of frivolous claims

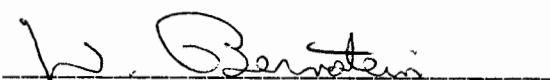
through manipulation of public perception, attorney's fees,
court costs, legal interest and all general and equitable relief.

WHEREFORE, plaintiffs, David Bernstein, David B. Bernstein, the
Steven W. Bernstein Trust, and Steven W. Bernstein pray that defendants,
The Chattanooga Times Free Press and WEHCO Media, Inc., be duly cited
and served with this Complaint, and that after all due proceedings, there be
judgment against defendants separately, jointly and in solido, ordering
defendants to publish full and appropriately placed apology and retraction,
for reasonable and appropriate punitive damages, for the hereinabove
described general damages in the amount of twenty-five (\$25,000,000) million
dollars, and reasonable actual damages, together with legal interest, attorney's
fees, all costs of these proceeding and all general and equitable relief.

Respectfully Submitted,

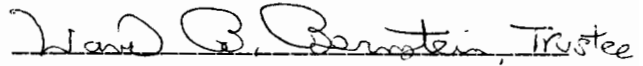
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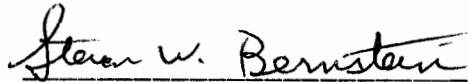


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